

OD-8

ITAT/96/2017
IA No.GA/2/2017 (Old No.GA/830/2017)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME
TAX, KOLKATA-4, KOLKATA

-Versus-

EVEREADY INDUSTRIES INDIA LIMITED

Appearance:
Mr. Smarajit Roychowdhury, Adv.
Mr. Madhu Jana, Adv.
...for the appellant.

Mr. Asim Choudhury, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 29th November, 2021.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 3rd February, 2016 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in ITA No.94/Kol/2012 for the assessment year 2005-06.

The revenue has raised the following substantial questions of law for consideration:

"a) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "B" Bench*

Kolkata was justified in law in upholding the order of the Commissioner of Income Tax (Appeals) in deleting the disallowances of Rs.31.76 lacs made by the Assessing Officer under Section 43B of Income Tax Act, 1961 on account of provision for leave encashment written back and Rs.256.32 lacs on account of foreign exchange fluctuation, a contingent liability and its purported finding in this regard are arbitrary, unreasonable and perverse?

b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "B" Bench Kolkata was justified in law in upholding the order of the Commissioner of Income Tax (Appeals) in deleting the disallowances of Rs.31,30,99,581/- on account of obsolete stocks written off, Rs.1,57,42,006/- on account of expenses for shifting Chennai Plant and Rs.4,06,77,996/- on account of upfront fees paid to ICICI Bank thought that the same was not routed through Profit and Loss Account nor claimed as deduction out of profit but claimed as deduction in revised computation of income filed with revised return and its purported findings in this regard are arbitrary, unreasonable and perverse?

c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "B" Bench Kolkata was justified in law in upholding the order of the Commissioner of Income Tax (Appeals) in holding that sale of factory land at Guindy, Chennai gave rise to capital gains and not business profit and its purported findings in this regard are arbitrary, unreasonable and perverse?"

We have heard Mr. Smarajit Roychowdhury, learned Counsel for the appellant/revenue and Mr. Asim Choudhury, learned counsel for the respondent/assessee.

On going through the order passed by the tribunal, we find that the tribunal was considering six issues in all. The revenue has raised three substantial questions of law before us which are covered in the six issues which were before the tribunal. The first of the issues was whether the Commissioner of Income Tax (Appeals) (in short CIT(A)) was correct in deleting the disallowance made by the assessing officer under Section 43B of the Act on account of provisions for leave encashment written back. The tribunal had re-appreciated the factual position and examined the consistent practice followed by the assessee in obtaining valuation report for ascertaining the incremental leave encashment liability and after taking note of the entire facts, came to the conclusion that the final statements drawn by the assessee are in compliance with the statutory requirements, such as, the Companies Act and the computation of the total income has been done in accordance with the Act. Furthermore, the tribunal rightly noted that the liability was contingent in nature and has not crystallised into actual liability and will not be allowed as deduction while computing the total income. Thus the tribunal after re-examining the facts upheld the finding of the CIT(A). Thus, we find that no substantial question of law arising therefrom.

The second issue was with regard to whether the CIT(A) was correct in deleting the disallowance on account of foreign exchange fluctuation. On this issue, the tribunal perused the

facts, the profit and loss accounts of the assessee and upheld the finding rendered by the tribunal by taking note of the decision of the Hon'ble Supreme Court in Commissioner of Income Tax, Delhi vs. Woodward Governor India (P). Ltd. reported in [2009]179 Taxman 326 (SC). Thus, there is no error in the finding rendered by the tribunal.

The tribunal was considering three other issues together and recorded its finding in paragraph 15 of the impugned order. The three issues being whether the CIT(A) was correct in deleting disallowance of obsolete stock written off by the assessee; whether the CIT(A) was right in deleting the disallowance of expenses for shifting of Chennai plant; and, whether CIT(A) was correct in deleting the disallowance on account of upfront fees, paid to ICICI Bank. We have perused the finding recorded by the tribunal and we find that the tribunal has elaborately discussed the facts before affirming the view taking by CIT(A). We find that no question of law much less substantial question of law arising for consideration.

The last ground was with regard to whether CIT(A) was correct in holding that the sale of factory land at Guindy, Chennai gave rise to capital gain and not to business profit. On this issue, the tribunal after noting the finding rendered by the assessing officer, as to how the CIT(A) reversed the same, on its part, re-examined the factual position and elaborately considered the matter, took note of the decision of the Hon'ble Supreme Court

in CIT vs. G. Venkataswami Naidu reported in 35 ITR 594(SC) wherein the Hon'ble Supreme Court held that the question whether gain made out of purchase and sale of the land, is an accretion or capital profit which may depend on particular facts and circumstances. After noting the said decision, the tribunal on facts, held that the view taken by the CIT(A) was fully justified. Thus, we find that there is no error in the manner in which the tribunal has approached the matter on all the aforementioned issues and we find that there is no question of law much less substantial questions of law arising for consideration in this appeal.

In the result, the appeal (ITAT/96/2017) fails and stands dismissed. Consequently, the stay petition (IA No.GA/2/2017 (Old No.GA/830/2017) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)